

REMARKS**Election/Restriction Requirement**

Applicant's attorney confirms the 03-16-2005 telephone conversation with Examiner Garcia and that a provisional election was made without traverse to prosecute the invention of species II, claims 2-5. Claim 1 is canceled; however, Applicant reserves the right to prosecute the subject matter of claim 1 at a later date.

04-07-2005 Telephonic Interview

During the interview the following issues were discussed.

1. Drawings Objection. Applicant advised that MPEP §601.01(f) does not require amendment to the drawings since all pending claims were method claims. The Examiner stated that this rule only pertained to the situation where no drawings were filed with the application. In other words, once drawings were filed, even if unnecessary, then the Examiner could require changes. Applicant stated the invention is not the actual structure of the barrier, but rather the method of use. In this situation, the drawings were submitted to provide illustration as to how the barrier is used rather than how constructed. The Examiner did not withdraw his objection.

2. Claim 2 grammatical changes. Changes to certain phrases were at issue specifically, "the portion" and "a portion". It was agreed that "the portion" was acceptable if "a portion" was changed to "said portion".

3. Claim 4 grammatical changes. The Examiner objected to the use of Velcro® in the claims. Applicant advised that based upon a search of the US Patent Office database use of Velcro® in the claims occurred 1,787 times. The Examiner agreed to permit Applicant to use the term "hook and loop" to replace Velcro®.

4. The term "low profile". Applicant informed the Examiner of support for use of this term in the specification at paragraphs [0005], [0007], [0011], and [0012]. The Examiner was apprised that according to MPEP§2173.05(a), he is encouraged to suggest alternative alternatives that are free from objection. No alternatives were provided and this issue was not resolved.

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5. Marshall reference. A discussion of the Marshall prior art reference occurred. No agreement was reached.

6. New claim 6. Discussion of a new claim occurred. No agreement was reached.

The following is Applicant's formal response to the Office Action dated 03-31-2005.

Pending claims 2 and 5 have been amended to more fully describe the invention for avoiding the Marshall reference. New independent claim 6 is also submitted. Claims 2 and 6 include the claim limitation "to create a barrier preventing movement of an infant from one area of a house to another". Applicant believes this added limitation avoids the Marshall reference which will be discussed in greater detail below.

Drawings Objection

The Examiner has objected to the original drawings on the basis of 37 CFR §1.83(a), taking the position that every feature of the invention specified in the claims must be illustrated.

Applicant respectfully disagrees. As support for Applicant's position, each of the original claims submitted are method claims. According to MPEP §601.01(f):

"It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113."

The submitted drawings evidence examples of the method of use Applicant regards as the invention. Structure of the barrier is not the invention since the barrier can be of various designs (see Applicant's specification paragraph [0005]). Drawings are not essential to understand the invention in the context the Examiner suggests. By example, the Examiner takes the position that a drawing must show sheeting material attached to the flooring using Velcro®. Applicant believes one having ordinary skill in the art understands how Velcro® is used in this manner and therefore illustrations are not necessary for an understanding.